THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.23701 of 2006

Dated: 15-11-2006

Between:

M/s Sri Chakra Cements Limited, Hyderabad.

..... PETITIONER

AND

The Chairman & Managing Director, SPDCL, Tirupathi, and others.

.....RESPONDENTS

THE HON'BLE SRI JUSTICE V.V.S. RAO

WRIT PETITION No.23701 of 2006

ORDER:

The petitioner is a company engaged in manufacturing cement at Karampudi, Guntur District. It is availing HT power supply from the respondents. For the month of September, 2006, the respondents raised bill for a sum of Rs.84,45,729/-. The bill for the month of October, 2006 was Rs.55,95,248/-. The petitioner allegedly paid a sum of Rs.10,00,000/- on 28-10-2006 and approached the respondents on 30-10-2006 requesting permission to pay the balance current consumption (CC) charges for September, 2006, in installments. Respondent No.1 considered the same and by memo dated 01-11-2006 permitted the petitioner to pay the said amount with interest at 24% p.a., in three installments of Rs.25,00,000/-, Rs.25,00,000/- and Rs.24,45,729/- on 05-11-2006, 10-11-2006 and 15-11-2006 respectively. The petitioner allegedly paid a sum of Rs.25,00,000/- on 05-11-2006, but is still due a sum of Rs.1,05,40,977/- for September and October, 2006. Instead of paying the balance amount, the petitioner again approached respondent No.1 by making representation on 10-11-2006 requesting to grant eight equal monthly installments to remit the same. Even before the same was considered by respondent No.1, the petitioner-company rushed to this Court seeking a writ of Mandamus declaring the action of respondent No.1 in not exercising the power of granting installments to it duly considering letter/representation dated 10-11-2006 as illegal and arbitrary. The petitioner-company also seeks a direction to the respondents not to disconnect power supply to its unit for nonpayment of balance monthly CC bills for September and October, 2006.

The learned counsel for the petitioner strenuously contends that the petitioner-company is a sick unit and a reference in proceedings No.186/88 is pending before the Board for Industrial and Financial Reconstruction (BIFR). Secondly, he submits that under clause 34 of the terms and conditions of supply of APSEB, respondent No.1 has power to permit the consumer to pay CC charges in installments with interest at 24% p.a., but failed to exercise such power. Lastly he would contend that the petitioner paid a sum of Rs.1,75,00,000/- towards security deposit with the respondents under clause 28 of the terms and conditions of supply of APSEB and therefore, no prejudice would be caused to the respondents by allowing the petitioner to pay the balance amount in installments. **Opposing** the writ petition, the learned standing counsel for Southern Power Distribution Company Limited (SPDCL) submits that respondent No.1 has already exercised power under clause 34 of the terms and conditions of supply of APSEB by issuing a memo

on
01-11-2006 permitting the petitioner to pay CC bill for September, 2006 in installments and therefore, the alleged inaction on the part of respondent No.1 cannot be accepted. He further submits that the petitioner-company has not paid September and October, 2006 bills and therefore, it cannot seek any indulgence from this Court.

A copy of representation dated 30-10-2006 is not filed before this Court. Be that as it is, on reading the memo dated 01-11-2006 issued by respondent No.1, it would be reasonable to draw an inference that in its representation dated 30-10-2006, the petitioner-company itself requested SPDCL for permission to pay balance amount of CC bill for September,2006 in three monthly installments. Having obtained a favourable order in respect of September, 2006 monthly CC bill, the petitioner again approached respondent No.1 on 10-11-2006 requesting to grant eight equal monthly installments for payment of CC bills for September and October, 2006 amounting to Rs.1,05,40,977/-. In this situation, even if the representation dated 10-11-2006 is not considered by respondent No.1, the same cannot be faulted. Admittedly (as seen from the representation dated 10-11-2006), the petitioner-company commenced its operations of manufacturing of cement at 900 tonnes per day from 05-11-2006 and therefore, it is their obligation to pay the electricity charges as the electricity is essential input in cement manufacturing. The petitioner-company has failed to prove any existing right that can be enforced nor it is able to show legal duty on the part of respondent No.1 to grant monthly installments for every monthly bill.

The General Terms and Conditions of Supply (GTCS) of SPDCL do not cast any such duty on respondent No.1 nor gave such right to a HT consumer. As per Section 56 of the Electricity Act, 2003 (the Act, for short), where a person neglects to pay any charge for electricity to a distributing licencee in respect of supply of electricity to such person, the licencee is entitled to cut off the supply of electricity after giving not less than 15 clear days' notice in writing. A defaulter can avoid disconnection of power supply only if he deposits an amount equivalent to the sum claimed in the bill or electricity charges due from him for each month. Therefore, the petitioner, who has admittedly failed to pay CC charges for the months of September and October,2006, is not entitled to seek a writ of Mandamus directing the respondents not to disconnect power supply for nonpayment of balance. Such Mandamus would run contrary to Section 56 of the Act. If the consumer fails to pay CC charges, it is always open to the distribution company to disconnect power supply.

Therefore, the writ petition is dismissed. No costs.

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V.V.S.RAO, J

15th November, 2006
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